

# 2003 Attorney General

## A N N U A L R E P O R T

Office of Attorney General | MIKE BEEBE



Arkansas  
Attorney General  
  
Mike Beebe



**THE ATTORNEY GENERAL  
STATE OF ARKANSAS  
MIKE BEEBE**

The Office of the Attorney General is traditionally viewed solely as a litigator, responsible for maintaining and defending the interests of the State before various judicial bodies and tribunals. I view the role of Attorney General as the guardian of the people of Arkansas.

My office is dedicated to safeguarding consumers, preserving the environment, and solving problems that range from predators on the Internet to identity theft to abuse and neglect of seniors. We provide legal advice in formal opinions and approve ballot-and-initiative titles for elections. We publish articles, alerts, and educational material. We advise State boards and commissions. We fight for fair utility rates and high-quality service for utility consumers. We work to uphold criminal convictions. We help families find their missing children. We draft and propose legislation to the General Assembly. And we investigate a multitude of deceptive acts, including consumer-and-Medicaid fraud.

I believe that the Attorney General's Office is the premier law office for the State, and I am proud of our successes, especially for protecting those in our society who are most vulnerable: children and senior citizens. I am committed to improving the lives of all Arkansans. We are here to serve you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Beebe", written over a light blue circular background.

Mike Beebe

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# 2003 IN REVIEW

## HIGHLIGHTS BY THE MONTH

### JANUARY

- Mike Beebe Takes Office as 51st Attorney General for the State of Arkansas
- Beebe Appoints Key Members to His Team
- Attorney General Alerts Arkansas Consumers to Tax Scams

### FEBRUARY

- The Attorney General and the Better Business Bureau Jointly Advise Consumers of a Misleading Web Site Masquerading as a Public-Protection Agency
- Beebe Announces a Proposed Settlement for \$80 Million Involving the Heart Medication Cardizem CD
- Pharmaceutical Giant Pfizer Agrees to Pay for Overcharging Arkansas Medicaid Recipients for Cholesterol-Lowering Drug Lipitor

### MARCH

- Attorney General Beebe Reaches \$1.5 Million Settlement with Beverly Enterprises, Inc., a National Nursing-Home Chain with 34 Facilities in Arkansas
- Beebe Announces that His Office Is Closely Monitoring Increases in Gas Prices
- A.G. Reaches Accord with H&R Block to Reimburse Clients for Unwanted Service

### APRIL

- Arkansas Attorney General Intervenes in Philip Morris Case to Protect Tobacco-Settlement Funds
- Attorney General Beebe Announces that Arkansas' Medicaid Program to Receive More Than a Million Dollars from Bayer Corporation and GlaxoSmithKline for Overcharging the State's Program
- Attorney General Announces a Resolution with Bristol-Myers Squibb Company to Settle an Antitrust Lawsuit Involving the Cancer-fighting Drug, Taxol

### MAY

- Attorney General Beebe Announces Latest in a Series of Law-Enforcement Actions Targeting Internet Spam
- On Behalf of the State of Arkansas, Beebe Files Suit against Internet Billing Company for Fraudulent Practices
- Mike Beebe Joins in Asking Supreme Court to Review "Pledge of Allegiance" Case
- Attorney General Hosts Arkansas Missing Children's Day Ceremony and First Annual Child Safety Fair

### JUNE

- Attorney General Announces Settlement with Arkansas Health Center, Following Investigation of Mistreatment and Neglect of 9 Patients
- Beebe Announces Refunds to Consumers in Phone-Slamming Case
- African-American Advisory Board Convened by Attorney General Beebe

# 2003 IN REVIEW CONT.

## **JULY**

- Beebe Tours the State to Emphasize the Need for Internet Safety
- Attorney General Announces No-Cost for Joining State and Federal “Do Not Call” Registries
- Attorney General Mike Beebe Appeals the Gas-Rate Settlement Agreement between the Arkansas Public Service Commission and Arkansas Western Gas, Saying Settlement Puts Too Great a Burden on Residential Rate Payers

## **AUGUST**

- Attorney General Beebe Distributes Fans and Air Conditioners to Seniors in Need
- Attorney General Warns Consumers of the Potential Hazards of the Herbal Stimulant, Ephedra
- Beebe Issued a Warning to Arkansans, Citing Foreign Lottery Scams that Tell Consumers They’ve Won Huge Amounts of Prize Money
- Attorney General Tours the State to Emphasize the Need for Internet Safety

## **SEPTEMBER**

- Senior Advisory Board Convened by Attorney General Beebe
- Attorney General Asks Bankruptcy Court for More Time to Investigate Claims that MCI Did Not Pay Taxes to State
- Beebe’s Public Protection Division Tops Million-Dollar Mark in Recoveries for Consumers
- Attorney General Hosts 250 Officers and Criminal-Justice Personnel from 39 Counties for the 2003 Statewide Law-Enforcement Summit, Focusing on Crimes against Children, Especially Online Crimes.

## **OCTOBER**

- Beebe Works to Prevent Destruction of Prescription-Drug-Pricing Information
- AG Secures Additional Time for Patients Who Purchased the Medication BuSpar to File for Reimbursement Resulting from a Settlement with Bristol-Myers Squibb
- For the Third Time, Beebe Announces Extended Time Period for Taxol Users to File Claims against Prescription-Drug Manufacturer

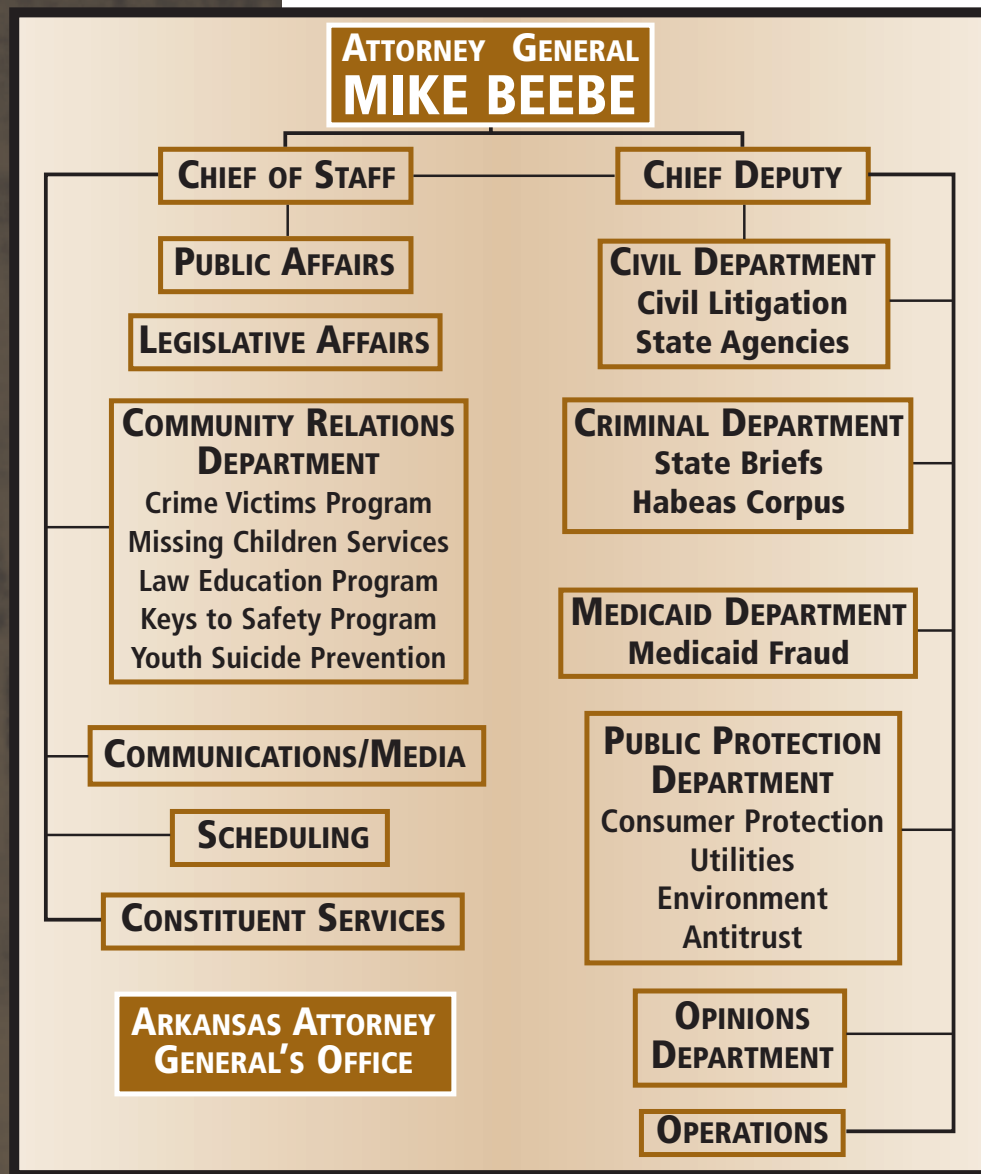
## **NOVEMBER**

- Attorney General Sues over Defective Body Armor Purchased by Arkansas State Police
- Beebe Files Suit against First United Group, Inc. for Allegedly Swindling Thousands with Empty Promises of Credit Cards or Loans
- Attorney General Helps Federal Officials Spread the Word to Protect Consumers’ Computers against Pop-Up Spam

## **DECEMBER**

- Beebe Announces Final Stages of Negotiations with the Department of Human Services and Arkansas Health Center to Address Patient Care Deficiencies
- Arkansas Attorney General Beebe and His Counterparts in 39 States Obtain Commitments from the Tobacco Companies to Remove Ads from Magazines Sent to Schools
- Beebe Warns Consumers about Work-at-Home Scams

# ATTORNEY GENERAL OFFICE STRUCTURE



Deputy Attorneys General: Darnisa Johnson, Criminal; Wendy Kelley, Civil; Teresa Marks, Public Protection; Luevonda Ross, Medicaid Fraud; and Elana Wills, Opinions



Attorney General Mike Beebe with Chief of Staff Ruth Whitney and Chief Deputy Dennis Hansen



# RACIAL DIVERSITY CHART



## ATTORNEY GENERAL OF ARKANSAS Mike Beebe

### RACIAL DIVERSITY REPORT December 31, 2003

	MINORITY NUMBER AND PERCENTAGE		MAJORITY NUMBER AND PERCENTAGE	
Attorneys*	8 of 65	12%	56 of 65	88%
Investigators/Outreach/Operations	12 of 40	30%	28 of 40	70%
Support Staff	19 of 44	43%	25 of 44	57%
<b>TOTAL</b>	<b>149 Individuals &gt;&gt;&gt; 100%</b>			

\* Additionally, two of the five Department Deputies are African-American.

Attorney General-elect Mike Beebe  
appoints key members to his team

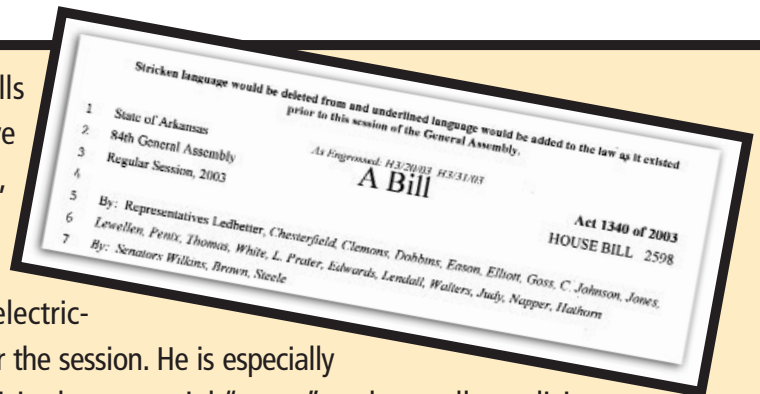
News | Salem, AR | 16/01/2003

Beebe is a breath of  
fresh air in Arkansas

Chicot County Spectator | Lake Village, AR | 6/25/2003

# LEGISLATIVE PACKAGE 2003

The 84th General Assembly enacted 22 of the 23 bills proposed by Attorney General Mike Beebe's legislative package in the session. Of the 22-approved measures, Beebe considers antitrust legislation, a bill banning predatory lending in the home-mortgage market, and legislation to repeal a law opening the door to electric-utility deregulation among his top accomplishments for the session. He is especially pleased with the passage of a bill to regulate unsolicited commercial "spam" and sexually explicit electronic mail and with the passage of a law making it illegal for wholesalers and retailers to sell or import cigarette brands not in compliance with Arkansas law.



- **Act 1172 allows the Attorney General's Office to work with a number of other states to protect taxpayers and consumers against antitrust violations by major corporations.** For example, the law would allow Beebe to file suit on behalf of the State's Medicaid program or a group of consumers to recover damages from companies, such as large out-of-state drug manufacturers, for violations of antitrust laws, even when the State itself has not purchased the drugs directly from the manufacturers.

The State's business community has opposed similar legislation in the past, but Beebe worked with key Arkansas business leaders to draft legislation that does not subject businesses to frivolous lawsuits.

- **Act 1019 is a law aimed at regulating spam e-mail and clearly identifying potentially sexually-explicit spam.** Consumers receiving unwanted sexually-explicit spam will now be able to delete it before they or their children open the mail. This Act requires companies to provide consumers with a valid alternative allowing them to opt-out from receiving spam. The sender's legal name, address, and Internet domain name are also required. In addition, sexually explicit e-mails must now contain "ADV:ADULT" in the subject line so that consumers can clearly identify them and avoid them if they wish. Consumers and Internet Service Providers (ISPs) can file private actions against companies that violate the provisions. They may receive up to \$10 per e-mail or \$25,000 per day, whichever total is lower. Violating the sexually-explicit labeling guidelines is a Class B misdemeanor.
- **Act 1340 protects elderly widows and others from predatory lenders when the lenders target equity in homes by frequently refinancing loans and increasing fees and costs.** General Beebe worked with bankers, mortgage brokers, consumer groups, and senior citizens' organizations to craft a bill that protects those vulnerable to predatory lending without unduly restricting legitimate lending.
- **Act 204 repeals the State's four-year-old law opening the door for electric-utility deregulation and includes amendments proposed by Beebe's office to protect ratepayers.**



# LEGISLATIVE PACKAGE 2003 CONT.

## Beebe's bills focusing on lending, Rx suits

Benton County Daily Record | Bentonville, AR | 3/24/2003

- **A state directory of cigarette brands deemed legal for sale was created under Arkansas Act 1073 of 2003.** Under Arkansas law, manufacturers that did not participate in the settlement must pay into an escrow account. If a participating manufacturer fails to pay under the settlement terms, or a non-participating manufacturer does not comply with the escrow requirements, its brands will no longer be legally sold in Arkansas. Under the new law, it is illegal for wholesalers and retailers to sell or import brands not listed in the Attorney General's directory.
- **The Attorney General's legislative agenda included five bills from the Medicaid Department.** Act 1118, codified at ACA 5-28-101, amends the Abuse of Adults Chapter of the Arkansas Code for long-term-care facilities. Act 1122, codified at ACA 5-55-103, prevents people convicted of Medicaid fraud from participating in the Arkansas Medicaid Program. Act 1162, codified at ACA 5-28-106, clarifies the jurisdiction of the Attorney General's Office in applying civil fines for violations of the Abuse of Adults Act. Act 1163, codified at ACA 20-77-902, concerns liability for certain acts under the Arkansas Medicaid Program, and Act 1164, codified at ACA 5-28-107, amends the provisions concerning investigations by the Attorney General and the Department of Human Services. All of these statutes will enable the Medicaid Fraud Department to conduct its investigations more efficiently and to achieve greater results.

## Attorney general touts success for most of legislative package

Arkansas Democrat Gazette | Little Rock, AR | 4/21/2003

# ADVISORY BOARDS

**In September, Attorney General Beebe convened a meeting of his Senior Advisory Board, a select group of knowledgeable Arkansans who agreed to participate as voluntary advisors to his office. General Beebe organized the Board earlier in the year.**

The Advisory Board includes 11 members and was established to keep a constant dialogue open between Arkansas seniors and the Attorney General's Office. Throughout the year, Board members are briefed and updated on programs available to all Arkansans, with topics ranging from consumer fraud and crime-victims rights, to scams and child safety. The meetings also give General Beebe the chance to learn more about issues that concern Board members and their communities.

The people serving on this advisory board will help ensure that the Attorney General's Office is meeting the needs of our older population, and that seniors know about all the services available through the office.



*Advisory board set up to address needs of seniors*

DEBRA LEE FOR VISTA VISTA

Weekly Vista | Bella Vista, AR | 10/15/2003



# ADVISORY BOARDS CONT.

The African-American Advisory Board includes 13 members and nine alternates and was established to create a working relationship between the Attorney General's Office and the African-American community. These Board members are looked to in their communities for guidance and positive change. General Beebe organized this group so that he can hear what communities need and so that he, in turn, can inform citizens that his office has many programs and services in place that are available to the public.



# COMMUNITY RELATIONS

## ABOUT THE DIVISION

**The Community Relations Division** administers several public-assistance programs that provide important ancillary services that go above-and-beyond the office's legal requirements.

- **Crime Victims Reparations Program**—serves victims of violent crime by providing financial assistance to eligible individuals or their dependents.
- **Prevention and Education Section**—offers programs, such as "Smart Choices, Better Chances" and "Keys to Safety," which are designed to provide information and assistance to children, parents, community groups, and law-enforcement agencies.
- **Arkansas Missing Children Services Program**—serves as the statewide clearinghouse for missing and exploited children.

## NOTABLE EVENTS

### YOUTH SUICIDE POSTER/POETRY CONTEST

Attorney General Mike Beebe encouraged Arkansans to observe March 2-8, 2003, as Youth Suicide Prevention Week by participating in activities to heighten awareness about suicide prevention. Entrants from more than 50 Arkansas schools submitted over 1,000 poems and posters, and Beebe hosted an awards ceremony at the State Capitol Rotunda for the winners of the contest.





# COMMUNITY RELATIONS CONT.

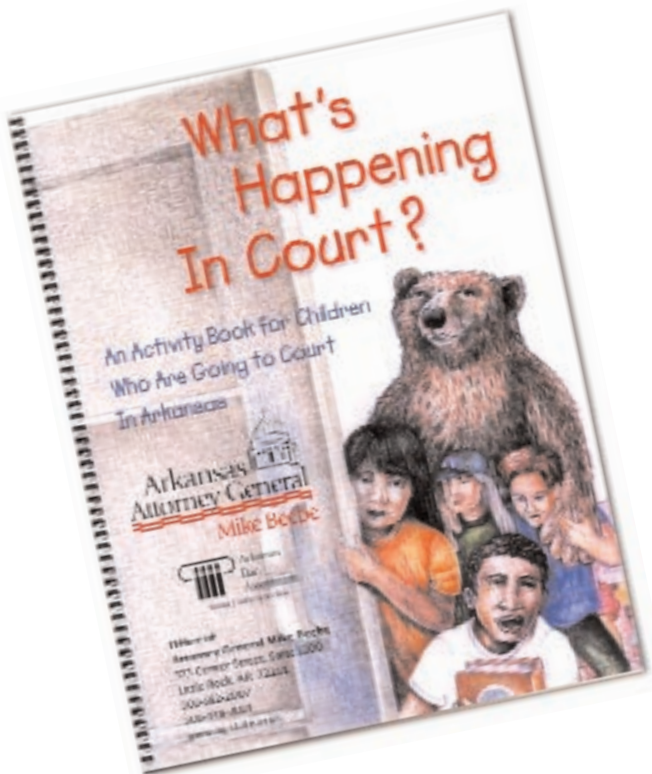
## DISTRIBUTION OF CHILD ID CARDS REACHED 250,000 MARK

Attorney General Beebe's first year in office saw the distribution of child-identification cards reach the quarter-million mark. General Beebe was able to form a partnership with Arkansas Children's Hospital to secure funds for the redesign and printing of these important tools for law enforcement. In 2003 alone, more than 51,000 children received one of these free kits.



## DISTRIBUTION OF CHILDREN'S GUIDE TO COURT BOOK AND JUVENILE LAW BOOK

Two new books to assist juveniles and children in better understanding the judicial system in Arkansas were developed and printed during 2003 utilizing grant funds secured through the Department of Education. "What's Happening in Court?" is an activity book for children who are going to court in Arkansas. Additionally, a juvenile-law handbook was developed to supplement the teachings of Smart Choices, Better Chances. Topics include the juvenile-justice system, criminal offenses, weapons, gangs, alcohol and illegal drugs, and laws dealing with recreation.



# COMMUNITY RELATIONS CONT.

## MISSING CHILDREN'S DAY

In May, General Beebe hosted the Arkansas Missing Children's Day held in conjunction with a Child-Safety Fair. More than 350 people, including families of missing children and local elementary students, participated in the day's events. The Child-Safety Fair featured booths for photo identification, dental imprints, fingerprinting and other activities, such as the Arkansas Children's Hospital's fire-safety house.

**Attorney General Mike Beebe**  
Attorney General Hosts Events  
to Honor State's Missing Children

Waldron News | Waldron, AR | 5/14/2003





# COMMUNITY RELATIONS CONT.

## SENIOR CONSUMER FORUMS

In December, General Beebe partnered with the AARP of Arkansas to begin a Senior Consumer Forum tour. Participants received invaluable information on topics including charity fraud, identity theft, predatory lending, investment securities, and financial abuse and exploitation.



# COMMUNITY RELATIONS CONT.



## KICK-OFF OF INTERNET SAFETY TOUR

In December, Attorney General Beebe kicked off his Internet Safety Tour in Searcy. A total of six forums were held with school-age children, elected officials, parents, law-enforcement personnel, business leaders, and educators to inform them about the dangers of the Internet predators.



State Rep. Shirley Walker, R-Harrison, left, and Smith Police Chief Randy Pineda and Logan County Chief Deputy Jon Johnson, left, in Arkansas Attorney General Mike Beebe speaks about Internet safety to legal and state officials, and area high school students at TAC Air in Fort Smith on Wednesday.

### Beebe Preaches Internet Safety

Times Record | Ft. Smith, AR | 8/28/2003

## RELEASE OF PSA ON INTERNET SAFETY

General Beebe toured the State to announce the release of several public-service advisories emphasizing the need for Internet safety and his office's efforts to educate parents, children, educators, and law enforcement to the risks that may be encountered online. Beebe visited Texarkana, Pine Bluff, Little Rock, Jonesboro, Fayetteville, and Fort Smith.



# COMMUNITY RELATIONS CONT.

## LAW ENFORCEMENT SUMMIT & AWARDS

Man with a 'hero's heart' named state's Officer of the Year

Arkansas Democrat Gazette | Little Rock, AR | 9/11/2003



Police warned of sex crimes against kids that begin online

Arkansas Democrat Gazette | Little Rock, AR | 9/11/2003

In partnership with the National Center for Missing and Exploited Children and the Office of Juvenile Justice and Delinquency Prevention, the Attorney General's Office presented a statewide law-enforcement summit and awards ceremony to 250 law-enforcement officers, criminal-justice personnel, and practicing attorneys. The day-long training focused on Internet crimes against children, parental abductions, and child sexual exploitation. In addition to the training, General Beebe recognized outstanding law-enforcement personnel in his first-annual law-enforcement awards ceremony.





[www.aq.state.ar.us](http://www.aq.state.ar.us)



# COMMUNITY RELATIONS CONT.

## County Name Total Awards Total Payouts

Arkansas	31	\$30,523.05
Ashley	10	21,982.03
Baxter	24	21,056.78
Benton	295	273,763.19
Boone	27	29,008.58
Bradley	12	7,582.96
Calhoun	1	153.50
Carroll	21	31,978.24
Chicot	5	15,200.42
Clark	14	10,915.07
Clay	3	5,270.00
Cleburne	11	5,523.50
Cleveland	2	3,574.39
Columbia	9	12,109.63
Conway	6	5,306.99
Craighead	101	112,942.20
Crawford	38	30,694.61
Crittenden	57	76,992.95
Cross	11	13,809.38
Dallas	7	18,315.55
Desha	9	10,543.32
Drew	11	34,947.09
Faulkner	78	68,001.60
Franklin	18	15,743.54
Fulton	9	12,069.49
Garland	58	88,555.05
Grant	16	18,002.30
Greene	37	27,088.17
Hempstead	18	16,742.22
Hot Spring	17	29,255.02
Howard	5	14,698.49
Independence	19	27,744.95
Izard	5	3,298.64
Jackson	7	35,573.29
Jefferson	202	235,616.67
Johnson	19	13,678.06
Lafayette	18	21,993.91
Lawrence	6	14,130.38
Lee	0	0.00
Lincoln	5	9,129.08
Little River	9	11,683.48
Logan	16	15,296.52
Lonoke	33	25,009.82

## County Name Total Awards Total Payouts

Madison	15	29,353.04
Marion	12	19,818.99
Miller	36	53,966.51
Mississippi	14	55,135.16
Monroe	3	8,635.98
Montgomery	20	36,111.80
Nevada	6	4,113.41
Newton	0	0.00
Ouachita	52	81,452.90
Perry	15	16,502.29
Phillips	11	46,924.42
Pike	8	19,309.78
Poinsett	7	6,184.93
Polk	3	8,829.86
Pope	65	68,462.76
Prairie	5	4,868.55
Pulaski	436	565,844.40
Randolph	12	6,828.83
Saline	80	106,355.46
Scott	2	1,021.76
Searcy	2	653.44
Sebastian	122	136,976.20
Sevier	6	23,037.31
Sharp	8	14,968.15
St. Francis	12	64,482.34
Stone	1	553.00
Union	59	108,157.94
Van Buren	9	18,317.08
Washington	330	337,307.74
White	28	22,464.43
Woodruff	0	0.00
Yell	16	5,589.76
Totals	2695	\$3,347,732.33

## Combined Totals:

Claims Received	2392
Claims Awarded	2695
<b>Total Paid</b>	<b>\$3,347,732.33</b>
Claims Denied	261
Claims Closed	143

## CRIME VICTIMS Record-high Payouts to Innocent Victims of Crime

The Arkansas Crime Victims Reparations Board awarded \$3,347,732.33 in reparations to 2,695 crime victims in the 2003.

The Attorney General's Office provides the staff to administer the Crime Victims Program under the direction of the Crime Victims Reparations Board. The program's goal is to provide compensation for victims' unexpected expenses, such as medical treatment, mental-health counseling, rehabilitation, lost wages, replacement services, and funeral expenses.

One of the most innovative aspects of the Arkansas Crime Victims Reparations Program is that a portion of the funding comes from fines imposed on the convicted criminals. A major source of revenue for the program is the assessment of court costs and fees. The Crime Victims Program was created by the 76th General Assembly in 1987. Members of the Crime Victims Reparations Board make decisions on which claims can be paid and how much the award should be. The Board includes Alvin Clay of Little Rock, Dr. Jan Church of Little Rock, Colleen Nick of Alma, Susan Bradberry of Stuttgart, and Jodi Dennis of Pine Bluff.

# CIVIL DEPARTMENT

## ABOUT THE DEPARTMENT

**The Civil Department** has the responsibility of serving as the primary law firm for its client, the State of Arkansas, by providing legal counsel and by representing the State in litigation.

- **State Agencies Division**—provides legal representation to the State's boards, agencies, and various officials.
- **Litigation Division**—handles a wide variety of lawsuits, many of which include challenges to the constitutionality of State statutes.

## NOTABLE CASES

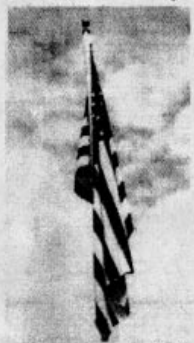
### LAKE VIEW

This long-running case was originally filed in 1992 by the Lake View School District of Phillips County as a challenge to the method used by the State to distribute funds to school districts. The issues addressed by this case are exceedingly complicated and important. The Attorney General has presented the Court with a fair and thorough discussion of the issues and the evidence so that the Court can make a reasoned, fully-informed decision. The Civil Department continued to meet with state officials and offered legal guidance regarding compliance with the Lake View decision throughout 2003 to the Department of Education, legislative leaders, and the Governor.

**Attorney General:**  
Education most important  
issue facing Arkansans

Camden News | Camden, AR | 8/21/2003

### Attorneys General Seek Supreme Court Review For Pledge Of Allegiance Case



Arkansas Attorney General Mike Beebe released information this week that he has joined his counterparts across the country in filing a brief asking for a Supreme Court review of an appellate court's decision regarding the Pledge of Allegiance. The Ninth Circuit Court of Appeals held, in *Newdow v. United States of America and Elk Grove Unified School District*, that the Pledge of Allegiance violates the Establishment Clause of the First Amendment to the United States Constitution.

According to the release, 49 states have joined the amicus curiae ("friend of the court") brief. The Attorney General of California, where the case originated, will reportedly file his own brief supporting the Pledge.

"The federal court has equated the Pledge of Allegiance to an establishment of religion," Beebe said. "In 'God We Trust' is printed on every piece of money and the words hang in every American courtroom, yet that phrase does not establish or endorse religion. The Supreme Court has ruled before that the same is true for the Pledge of Allegiance, and I hope they will again."

"The Ninth Circuit's decision defies a nation," the attorneys general wrote in their brief. The release states that they are not seeking to break new ground, but are asking the Court, "to exercise judicial discretion in favor of granting the petitions (for *certiorari*) for two compelling reasons. First, the *Newdow* decision is of nationwide interest, as that interest is expressed in public policy through the laws of 41 states. Second, the *Newdow* decision clearly conflicts with the Seventh Circuit Court of Appeals' decision in *Sherman v. Community Consolidated School District 21*. *Newdow* also conflicts with opinions and observations made by this Court and individual Justices confirming the constitutionality of the Pledge of Allegiance."

continued on page 2

Marshall Mountain Wave | Marshall, AR | 6/19/2003

### TOBACCO

Tobacco manufacturers must make payments to Arkansas and other settling states in accordance with the Master Settlement Agreement (MSA). The payments are required by the MSA, signed on November 23, 1998, in which all the major tobacco companies agreed to settle lawsuits brought against them by the attorneys general of nearly all the states alleging that the companies were responsible for smoking-related costs imposed upon the states. Under the MSA, the major tobacco companies agreed to make payments in perpetuity to the states. Payments through 2025 are expected to exceed \$200 billion.

In Arkansas, the State's approximately \$60-million-annual payment is dedicated to broad-based, public-health issues, including smoking-prevention-and-cessation research and Medicaid programs. For 2003, Arkansas received over \$17 million in January and \$42.3 million was received for the April payment.

### OFFICE OF CHILD SUPPORT ENFORCEMENT

In *Walters v. Weiss*, the Civil Department defended the Office of Child Support Enforcement in a federal class-action suit challenging various aspects of the State child-support system. Among the aspects challenged were collection fees and delays of disbursements by the system. The case is currently on appeal by the plaintiffs to the United States Court of Appeals for the Eighth Circuit. In a related case brought by a custodial parent, *Bradshaw v. State of Arkansas*, the Department also prevailed in defending the child-support system.



# CIVIL DEPARTMENT CONT.

## **PUBLIC EMPLOYEES**

In McFadden, et al. v. Weiss, the Attorney General's Office successfully defended a challenge of the 1991 increases given by the Arkansas General Assembly to beneficiaries who retired on or before June 1, 1991, and were members of the Arkansas Public Employees Retirement System, the Arkansas State Police Retirement System, or the Arkansas Highway Employees Retirement System. The challenge was brought as one of the claims in a class action by a group of federal employees who were challenging the increase as a violation of the intergovernmental immunity-tax doctrine. The plaintiffs claimed the State was, in reality, giving a tax rebate to State retirees and not to federal retirees, rather than simply increasing the retirement benefits of State retirees.

## **JONESBORO HUMAN DEVELOPMENT CENTER**

The Civil Department defended this class action challenging the conditions at the Jonesboro Human Development Center in a week-long trial in June of 2003 before United States District Court Judge James Moody. The plaintiffs challenged whether a safe and humane living environment was provided to the residents, as well as whether the policies and procedures for operation of the Center were constitutionally adequate. The trial in Jonesboro included a tour of the facility by Judge Moody.

## **DISABILITY RIGHTS**

The Disability Rights Center brought a case on behalf of Jane Doe, who was a resident of the Conway Human Development Center, arguing that State law and DHS/DDS policy regarding admission and discharge from the human development centers is unconstitutional. The case was dismissed when the plaintiff died, but another lawsuit that raises the same issues has now been filed on behalf of other plaintiffs.

## **WHISTLEBLOWERS**

In another victory for the Attorney General on behalf of the Department of Human Services, Judge Tom Eisele dismissed a case filed by an employee at the Conway Human Development Center who alleged that she was terminated in violation of the First Amendment when she reported alleged violations of policy in the care provided to clients at the Center, Joanne Wiley v. Kurt Knickrehm, et al. The case is currently on appeal to the Eighth Circuit.

## **TAX FORECLOSURE SALES**

The State won a challenge to the notice provisions for tax-foreclosure sales established by the Arkansas General Assembly. In Jones v. Double D, Inc., the plaintiffs alleged that they did not receive sufficient notice that their home was to be sold due to nonpayment of their property taxes. The Arkansas Supreme Court rejected the notice claim.

## **DEPARTMENT OF CORRECTION**

The Attorney General won three cases in which plaintiffs had alleged the Arkansas Department of Correction failed to protect the inmates through failure to maintain an adequate number of correctional officers at the North Central Unit prison, Krein v. Norris, et al., Roland v. Norris, et al., and Lawrence v. Norris, et al. The plaintiffs in these three cases were asking the federal courts to grant injunctive relief that essentially would have dictated staffing policies for the Arkansas prison.

## **EMPLOYMENT**

In 2003, the Civil Department prevailed in numerous cases brought by State employees. In one case, an employee challenged the Arkansas Public Employees Retirement System's requirement that a person have prior investment experience to work in the investment department of the Arkansas Public Employees Retirement System. The case was tried before a jury in Little Rock. The second case was a victory for the Arkansas State Police in a lawsuit brought about by a former state trooper, who had been discharged from the force.

# CIVIL DEPARTMENT CONT.

## LIST OF BOARDS AND COMMISSIONS

### Regularly represented 178 agencies/commissions

Accountancy, State Board of Public Acupuncture and Related Techniques, State Board of Aeronautics Commission Arkansas Building Authority Arkansas Educational Television Commission Alcoholism & Drug Abuse Counselors, State Board of Examiners Alcohol & Drug Abuse Coordinating Council Appraisers Licensing & Certification Board Architects, State Board of Arkansas Beef Council Arkansas Bioscience Institute Board Arkansas Crime Information Center Arkansas Deaf & Hearing Impaired Telecommunications Services Corporation Arkansas Department of Community Corrections Arkansas Department of Correction Arkansas Department of Emergency Management Arkansas Department of Finance & Administration Arkansas Development Finance Authority Arkansas Economic Development Commission Arkansas Employment Security Department Arkansas Game & Fish Commission Arkansas Law-Enforcement Training Academy Arkansas Police Corps Advisory Commission Arkansas Sentencing Commission Arkansas State Hospital Arkansas State Police Arkansas Title Insurance Licensing Board Arkansas Tobacco Settlement Commission Arkansas Waterways Commission Arkansas Wheat Promotion Board Assessment Coordinator Department Athletic Commission Athletic Trainers, State Board Auctioneers Licensing Board Auditor of State – Unclaimed Property Bail Bondsman Licensing Board Bank Department Barber Board of Examiners Burial Association Board Capitol Zoning District Commission Child Welfare Agency Review Board Chiropractic Examiners Board Code Revision Commission Collection Agencies Board Commercial Mobile Radio Services Emergency Telephone Services Board Committee on Professional Conduct Committee on Unauthorized Practice of Law Commodity Research & Production Boards Community Colleges Cosmetology, State Board of Counseling, Board of Examiners in Crime Victims Reparation Board	Criminal Detention Facilities Board Department of Ed/Self Insurance Advisory Commission Department of Education Department of Human Services Department of Human Services Division of Child Care & Early Childhood Education Department of Information Services Department of Veterans Affairs Developmental Disabilities Services/Dietetics Licensing Board Disability Determination for Social Security Administration Disease Intervention Specialists Board Division of Behavioral Health Drug Director Early Childhood Development Commission Election Commissioners, Board of Embalmers & Funeral Directors, State Board of Engineers and Land Surveyors, Board of Registration for Professional Farm Mediation Office Fire & Police Pension Review Board Fire Protection Licensing Board Fire Training Academy Forestry Commission Geologist, State Board for Registration Governor's Developmental Disabilities Planning Council Health Educators, Board of Health Services Permit Agency & Commission Hearing Instrument Dispensers Board Heritage, Arkansas Department of Higher Education, Department of Historic Preservation Program Home Inspector Registration Board Institutional & Community Development Commission Insurance Department/Governmental Bonding Board Judicial Discipline & Disability Commission Kidney Disease Commission Land Commissioner Landscape Architects Board Law-Enforcement Officer Memorial Design Committee Liquefied Petroleum Gas Board Livestock and Poultry Commission Long-Term Care Advisory Board Manufactured Home Commission Martin Luther King Commission Massage Therapy Board Military Department Minority Health Care Motor Vehicle Commission	Office of Child Support Enforcement Office of Driver Control Office of State Procurement Opticians, Board of Dispensing Ouachita River Commission Parks and Tourism, Department of Pharmacy Board Physical Therapy Board Plant Board Podiatric Medicine, Board of Pollution Control & Ecology Commission Post Prison Transfer Board Private Career Education, State Board of Private Investigators & Private Security Prosecutor Coordinator Psychology Board Public Defender Commission Public Employees Retirement System Real Estate Commission Registered Residential Interior Designers, State Board of Rehabilitation Services Residential Interior Designers, State Board Rural Advocacy, Office of School for the Blind School for the Deaf Sentencing Commission Sex Offender Screening Program Social Work Licensing Board Soil Classifiers Board Soil and Water Conservation Commission Southern Arkansas University Speech-Language Pathology/Audiology Board Spinal Cord Commission State Crime Laboratory and Board State Library State & Public School Life & Health Insurance Board State Police Retirement System State Services for the Blind, Division of Student Loan Authority Teacher Retirement System Technical Institutes and Vocational Technical Schools Tobacco Control Board Towing and Recovery Board Transitional Employment Board Universities and Colleges Veterinary Medical Examining Board Water Well Construction Commission Workers Compensation Commission Workforce Education & Career Opportunities, Department of Youth Services Board  This doesn't include all the elected officials we represent in litigation upon request.
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# OPINIONS DEPARTMENT

## ABOUT THE DEPARTMENT

**The Opinions Department provides legal advice to the State on questions of unsettled Arkansas law.**

- **Formal Legal Opinions**—assists the Attorney General in giving a legal opinion when requested by certain enumerated State officials on questions of law concerning constitutional and other legal issues.
- **Ballot Initiatives**—reviews and certifies all ballot initiatives.

The Attorney General is charged by statute with the responsibility of providing written legal opinions upon request to State officials, including constitutional officers, members of the General Assembly, prosecuting attorneys, heads of executive departments of the State, and heads of state boards and commissions. A.C.A. § 25-16-706. Opinions are also issued to county boards of election commissioners on election-law questions. *Id.* Most of the opinions concern matters of law for which no existing statute or case provides a ready answer.

The Opinions Department, established to prepare these formal, written opinions, is also responsible for initial approval of Interlocal Cooperation Agreements, approval of popular names and ballot titles for initiatives and referendums of statewide impact, and responses to requests for opinions concerning the application of the Arkansas Freedom of Information Act (FOIA) as it applies to the release of records relating to certain public employees. While opinions of the Attorney General do not constitute binding law or precedent, they do provide the State with an important source of legal interpretation on questions that have not been addressed elsewhere.

Mike Beebe's Opinions Department consists of three full-time attorneys, one part-time attorney, and one legal assistant. The Department issued **375** opinions in calendar year 2003. While State law does not impose a deadline for responding to opinion requests, most opinions are issued within General Beebe's self-imposed 30-day deadline. The average time to complete each request during calendar year 2003 was **32** days.

Opinions Department attorneys also travel around the State to present seminars on FOIA.

## 2003 OPINIONS

Some high-profile issues and several difficult questions of note are summarized below. The full text of all Attorney General opinions can be found on the Attorney General's Web site at [www.ag.state.ar.us](http://www.ag.state.ar.us).

- 2002-337** Addresses sexually-violent-predator issues and the 8th Amendment to the U.S. Constitution.
- 2003-013** Responds to whether House Bill 1083 violates the school-funding formula.
- 2003-014** Concerns the constitutionality of a court order issued by the Honorable Collins Kilgore in the Lake View School District case.
- 2003-020** Responds to questions about powers of the Arkansas Schools for the Blind and Deaf Boards and the respective superintendents of the two schools.
- 2003-025** Concerns the constitutionality of House Bill 1020, specifically the amnesty provision. That provision relieves certain truck owners from sales-tax liability.

# OPINIONS DEPARTMENT CONT.

- 2003-030** Regards clarification of House Bill 1213, which allows certain classes of nursing-home facilities to opt-out of the Patient's Recovery Fund created by the bill.
- 2003-048** Responds to questions about provisions of the Arkansas Freedom of Information Act (FOIA).
- 2003-089** Responds to questions of whether ACA 26-80-204(18)(B) meets the same constitutional standards as ACA 26-80-204(18)(D). Q2) Responds to questions of whether ACA 26-80-204(18)(B) loses any constitutional validity as a credit to the Uniform Rate of Tax mandated by Amendment 74 to the Arkansas Constitution.
- 2003-090** Seeks to answer the question of whether the Governor is required by law to request the advice and consent of the Senate or any other source when appointing members to the Arkansas Game and Fish Commission.
- 2003-104** Opines on the constitutionality of Senate Bill 378, regarding the recall of elected constitutional officials.
- 2003-106** Responds to the question of whether legislators going to and from an interim committee meeting would have the same status as going to and from the Legislature with regard to immunity from anything other than a felony if stopped by any law enforcement official.

## OPINIONS DEPARTMENT 2003 YEAR-END FIGURES

**The following is a statistical breakdown of requests issued by the Opinions Department during calendar year 2003:**

Origin	Number	Percentage
House	147	39.0 %
Senate	98	26.0 %
Prosecutors	20	5.0 %
Circuit Judges	2	1.0 %
State Boards/Agencies	36	9.0 %
Constitutional Officers	3	1.0 %
3-Day FOIAs	38	10.0 %
Ballot Titles	24	6.0 %
Election Commissions	1	1.0 %
Interlocal Agreements	6	2.0 %
	375	100.0 %

A total of **387** opinions were requested in 2003. After taking into consideration the number of 2002 opinions completed in 2003, requests withdrawn in 2003, and requests pending at the end of the year, the total number of opinions issued during calendar 2003 was **375**.

Based on that figure, it took an average of **32** days to answer each request.

# OPINIONS DEPARTMENT CONT.

## 2003 BALLOT TITLES

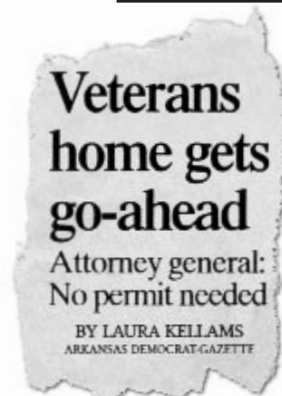
The purpose of review and certification of the popular name and ballot title of all proposed initiative and referendum acts or amendments, before the petitions are circulated for signature, is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.

Pursuant to A.C.A. § 7-9-107, the Attorney General is neither required nor authorized to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. Consequently, this review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, of whether the proposed popular name and ballot title accurately and impartially summarize the provisions of a proposed amendment or act.

In 2003, only two ballot titles were certified by General Beebe, both asking that lotteries be placed on the ballot. After they were certified, the ballot titles were withdrawn by their sponsor.

## OPINIONS ISSUED DURING 2003

Month	#	Month	#
January	28	July	14
February	17	August	49
March	32	September	42
April	27	October	39
May	45	November	31
June	21	December	30
		<b>TOTAL</b>	<b>375</b>



Arkansas Democrat Gazette  
Little Rock, AR | 10/7/2003

# CRIMINAL DEPARTMENT

## ABOUT THE DEPARTMENT

**The Criminal Department** represents the State in felony-appeal cases before the Supreme Court and the State Court of Appeals and also represents the State in *habeas corpus* actions filed by inmates in State and federal courts.

- **Criminal Appeals Division**—works to see that State court convictions are upheld and that defendants are required to serve their sentences.
- **Habeas Corpus Litigation Division**—defends convictions and sentences against post-conviction challenges in State and federal courts.

As the case summaries below reflect, the Criminal Department handled varied legal issues and fact situations.

### **DAVIS V. STATE, 94 S.W.3D 892 (2003)**

Lee Roy Davis appealed a conviction on two drug offenses, arguing that evidence should have been suppressed at trial because the police lacked reasonable suspicion. Before the Supreme Court, the Attorney General's Office successfully argued that the police officers had a reasonable suspicion to stop and frisk Davis when they saw him engaged in illegal-drug activity.

### **SMITH V. STATE, CR 02-1258, SLIP OP. (ARK. SEPT. 25, 2003)**

In this opinion, the Arkansas Supreme Court affirmed Smith's convictions for the Class C felony of violation of a minor in the first degree after he had an affair with a former junior-high student while he was employed as a teacher by the Arkadelphia Public Schools. The Court rejected all of his arguments for reversal of his convictions, while sustaining the State's argument on cross-appeal.

### **OWENS V. STATE, CR 03-231, SLIP OP. (ARK. NOV. 6, 2003)**

The Arkansas Supreme Court affirmed Owens' conviction for the Class D felony of failure to pay tax after he purchased a \$100,000 motor home in Oklahoma, but registered and licensed it in Oregon, all the while living in Arkansas. Owens was a State district-court judge at the time that the charges against him were filed.

### **RIKARD V. STATE, CR 03-54, SLIP OP. (ARK. OCT. 9, 2003)**

In a drug case, the Arkansas Supreme Court affirmed the denial of Rikard's and Darnell's motion to suppress evidence seized without a warrant from garbage left at the curbside for collection in Jonesboro. The Court held that the seizure did not violate the Fourth Amendment to the United States Constitution and that Article 2, § 15 of the Arkansas Constitution did not grant a right of privacy in garbage left at the curb for collection.

### **RILEY NOEL V. NORRIS, 322 F.3D 500 (8TH CIR. 2003)**

Riley Noel was convicted of three counts of capital murder in 1993 in Pulaski County. After exhausting his State appeals all the way to the U.S. Supreme Court, Noel's further requests for relief were denied and the conviction was upheld. Noel was executed on July 9, 2003.



# CRIMINAL DEPARTMENT CONT.

## **MURPHY V. STATE, 39 S.W.3D 798 (ARK. APP., SEPT. 10, 2003)**

This case was the first opportunity for the appellate courts to define what the terms “temporary caretaker” or “position of trust or authority” in the sexual-assault-in-the-first-degree statute mean. Here, the victim was a developmentally delayed, sixteen-year-old minor who lived with his parents.

## **CHARLES SINGLETON V. NORRIS, 319 F.3D 1018 (8TH CIR. 2003) (EN BANC), CERT. DENIED, NO. 02-10605 (US OCT. 6, 2003)**

### **Appeals court affirms conviction, sentence**

Jonesboro Sun | Jonesboro, AR | 3/20/2003

Charles Laverne Singleton, a death-row inmate, was convicted of capital murder and sentenced to death on October 24, 1979. The Court found that Singleton was not competent to be executed whether he was taking his medication or not. The Habeas Division filed a petition for rehearing and suggestion for rehearing en banc. The motion was granted and the Eighth Circuit

reversed the earlier decision. The Court held that the State may forcibly administer antipsychotic drugs to a prison inmate who has a serious mental illness if the inmate is dangerous to himself or others and the treatment is in the inmate’s best interest, even if the forcible medication renders the prisoner competent for execution.

## **ECHOLS V. STATE, 105 S.W.3D 369 (2003)**

Echols was charged, along with two other defendants, with the murders of three eight-year-old boys in 1993. Echols has filed various actions in the trial-and-appellate courts, but the courts agreed with the State that Echols was not entitled to relief, and the courts upheld his conviction and sentence.

## **STATE V. HARMON, 113 S.W.3D 75 (2003)**

The Arkansas Supreme Court has never held a valid traffic stop to be unconstitutional because of a police officer’s ulterior motives. In fact, the Court has held just the opposite. Unlike pretextual arrests, Arkansas common-law jurisprudence does not support invalidation of a search because a valid traffic stop was made by a police officer who suspected other criminal activity.

In 2003, the Habeas Division responded to almost **200 new cases**, including five cases filed by death-row inmates challenging their capital-murder convictions and sentences of death. Additionally, the habeas lawyers responded to nearly **100 motions and court orders**. They participated in evidentiary hearings in both State and federal court and presented oral arguments in the Arkansas Appellate Courts and the United States Court of Appeals for the Eighth Circuit.

The lawyers in the Criminal Appeals Division, like the habeas lawyers, presented oral arguments before the Arkansas Supreme Court and Arkansas Court of Appeals. It is their job to seek justice in the final criminal-review process for the citizens of Arkansas by ensuring that valid convictions are upheld. The Criminal Appeals Division filed **478 appellate briefs** in the Arkansas Appellate Courts.

# PUBLIC PROTECTION DEPARTMENT

## ABOUT THE DEPARTMENT

**The Public Protection Department** is responsible for safeguarding the rights of Arkansas consumers and ratepayers and for preserving Arkansas' natural resources.

- **Consumer Protection Division** – mediates individual consumer complaints, promotes consumer education, investigates violations of Arkansas law, and prosecutes civil action.
- **Utilities Division** – represents ratepayers in policy and rate-making proceedings before the Public Service Commission, State and federal agencies, and the courts.
- **Antitrust Division** – protects Arkansans from price discrimination, price fixing, and monopolies; prosecutes alleged violations of State or federal antitrust laws that limit competition.
- **Environmental Division** – promotes the health and safety of Arkansans by protecting the environment and providing support to State agencies with environmental missions, drafts regulations, participates in settlement negotiations, and prosecutes criminal environmental cases.

From the office of Attorney General Mike Beebe

**Attorney General Mike Beebe  
cools down the summer for  
Arkansas seniors**



Woodruff Co. Monitor Leader | McCrory, AR | 8/6/2003



# PUBLIC PROTECTION DEPARTMENT CONT.

## NOTABLE EVENTS

### AIR CONDITIONERS AND FANS FOR SENIORS

The Attorney General's Office used settlement funds from Knoll Pharmaceuticals and Pfizer after an investigation into the ways they promoted a synthetic thyroid-replacement drug (Synthroid) by using false, deceptive, and misleading claims. A total of \$27,000 of the settlement money was used to purchase air conditioners and fans for seniors who needed help fighting the hot summer temperatures. Fans went to all eight regions of the Arkansas Area Agencies on Aging, and people in all 75 counties were involved.

## NOTABLE CASES

### CARDIZEM ANTITRUST LITIGATION

This multistate case involved an illegal agreement between the makers of the brand-name heart medication Cardizem (HMRI) and the makers of its first generic competitor (Andrx) to keep generic competition off the market. Arkansas' Attorney General participated in a settlement requiring defendants to pay a total of \$80 million, a portion to be paid to affected consumers and third-party payers in Arkansas.

**Attorney General Mike Beebe  
announces \$80 million settlement**

Waldron News | Waldron, AR | 5/02/2003

### BU SPAR ANTITRUST LITIGATION

This litigation involved allegations of a unilateral attempt by Bristol-Myers Squibb to keep generic competition off the market for their brand-name, anti-anxiety drug BuSpar. Arkansas was very active in this case, having been on the complaint-drafting committee as well as the defensive-discovery committee. A settlement required defendants to pay a total of \$100 million, with tens of thousands of dollars in restitution paid to affected Arkansas consumers.

### TAXOL ANTITRUST LITIGATION

General Beebe settled with Bristol-Myers Squibb for the unlawful extension of their exclusivity rights over the sale of the brand-name drug Taxol, used in the treatment of ovarian, breast, and a variety of other cancers. The lawsuit alleged that Bristol knowingly manipulated the U. S. Patent and Trademark Office process and prevented generic drugs from entering the marketplace until 2000. As a result, hospitals, cancer patients, and states were forced to pay nearly a third more for Taxol treatments.

A settlement provided for a total payment from defendants of \$55 million, 13,000 vials of free Taxol to be distributed to DEA-approved agencies, and restitution to be paid to affected Arkansas consumers.

**Beebe's office breaks record, surpasses  
\$1 million recovered for state's citizens**

Northwest Arkansas Times | Fayetteville, AR | 10/10/2003

# PUBLIC PROTECTION DEPARTMENT CONT.

## STATE OF ARKANSAS V. ARCHER DANIELS MIDLAND

In April, 2003, the Attorney General's Office entered into a landmark Clean Air Act settlement with grain-industry giant Archer Daniels Midland Company (ADM). The settlement was the result of an unprecedented joint federal-and-state-enforcement effort with 14 states and counties signing on to the consent decree. In the lawsuit Arkansas alleged that ADM failed to accurately estimate its emissions from hundreds of process units, violating the Clean Air Act. The complaint alleged that three ADM plants in Arkansas violated the law.

## STATE OF ARKANSAS V. WALLY EL-BECK

This case involved an incineration facility, the Arkansas Municipal Waste to Energy Facility

(AMWEF), located in Osceola, Arkansas, and a number of different warehouses nearby that stored various types of waste. In the summer of 2003, inspections conducted by personnel from the Arkansas Department of Environmental Quality and personnel from the Arkansas Department of Health indicated various types of municipal solid waste, medical/infectious waste, and hazardous waste were all observed and documented as being improperly stored at the facility. Because of the potential health hazard associated with these materials and their improper storage, the Attorney General's Office intervened in the ADEQ's case.

After a hearing, the owner and operator of the AMWEF facility was ordered to provide security for the warehouse buildings. When he failed to comply with the court's order, he was held in contempt. A final trial on the merits of this case is expected to take place in the summer of 2004.

**Beebe sues to stop credit-card scam**

Sun-Times | Heber Springs, AR | 11/21/2003

**Beebe  
Opposes  
Gas Deal**

Fayetteville Morning News  
Fayetteville, AR | 7/19/2003

## ARKANSAS WESTERN GAS RATE INCREASE

The Arkansas Western Gas Company (AWG), headquartered in Fayetteville, came to the Public Service Commission in November, 2002, asking for a general rate increase of \$11 million overall, plus another several million dollars in the cost of gas. AWG also asked for residential customers to bear more than \$8.6 million of the base rate increase.

The staff of the Commission and groups representing commercial-and-industrial customers reached a settlement with the company. Attorney General Beebe opposed this settlement, arguing that it posed an undue burden on residential ratepayers. The Commission accepted many of the Attorney General's arguments and substantially modified the proposed settlement, saving residential customers more than \$1 million over the next two years.

# PUBLIC PROTECTION DEPARTMENT CONT.

## Unveiled plan may curb sales of tobacco to minors

Leader | Cabot, AR | 10/01/2003

manufacturers of tobacco products, a State law was enacted providing for the assessment of penalties against a non-participating manufacturer that fails to fully deposit the appropriate escrow amount into a qualified escrow fund in a timely manner. In 2003, the Arkansas Attorney General's Office settled with five non-participating manufacturers for violating the escrow laws and received penalties for the State in the amount of \$566,841.09.

### H & R Block

As a result of a multistate investigation involving allegations of deceptive marketing practices, Arkansas entered into an Assurance of Voluntary Compliance with H&R Block. This resulted in a payment of \$50,000 to be used for consumer-protection education and enforcement. Additionally, H&R Block was required to set aside \$1,000,000 for a nationwide restitution program.

### STATE OF ARKANSAS V. DIRECT ONE, INC., ET AL.

In 2003, the Attorney General entered into a settlement with DirectONE, a long-distance company, and ten of its telemarketing partners. The settlement required a payment of \$25,000 to be used for consumer-protection education and enforcement, consumer restitution that could total as much as \$467,000, and a general change in DirectONE's business practices. At this time, the Attorney General has received responses from over 500 Arkansas residents who may be eligible for restitution payments. In addition to the settlement with DirectONE, the Attorney General also entered into settlements with six telemarketers who worked in cooperation with DirectONE.

## PENALTIES AGAINST NON-PARTICIPATING TOBACCO PRODUCTS MANUFACTURERS

After the Master Settlement Agreement was entered between Arkansas, 45 other states, and several major

## Beebe seeks refund for protective vests

### At \$200,000, police garments defective

BY ANDY EVANS

ARKANSAS DEMOCRAT GAZETTE

State Attorney General Mike Beebe said Wednesday that he has demanded a refund of more than \$200,000 for bullet-resistant vests bought by the Arkansas State Police and state Capital Police that turned out to be defective.

The manufacturer, Second Chance Body Armor of Central Lake, Mich., doesn't cough up the money, Beebe said, until the company for breach of contract and deceptive trade practices.

"They used to take their vests back, which we have tendered to them, and given us our money back," Beebe said.

George Smith, a spokesman for Second Chance, acknowl-

edged problems with the vests and said the company is negotiating with state officials over a possible refund.

"We've said all along that we want to do the right thing, and we will do the right thing," Smith said.

Arkansas State Police bought the Ultima II vests for 200 of its 400 officers and emergency troopers in June, said Col. Don Motton, the agency's commander. He said troopers found the vests became very hot, tight and uncomfortable and were believed to stop bullets effectively. The state Capital Police also bought 22 of the vests.

The vests were covered by a one-year warranty, but Second Chance voided police agencies in September that the vests had

material inside the vests, called Zylon, deteriorated faster than reported.

"The problem was highlighted here," Beebe said. Beebe, 74, police officer was injured by a car crash in 1998 that forced him out and lodged in his chest.

Second Chance has offered police departments for Kevlar panels, called Performance Panels, to supplement the Zylon vests. It also offers trade-in discounts on Monarch Assault vests made with a different protective material, on a "business adjustment" that gives officers a discount on any of the Monarch vests, Smith said.

State officials and those of law enforcement have accepted de-

See VESTS, Page 10D

Arkansas Democrat Gazette | Little Rock, AR | 11/14/2003

## Beebe: More defective body armor found

Jonesboro Sun | Jonesboro, AR | 12/04/2003



# MEDICAID FRAUD DEPARTMENT

## ABOUT THE DEPARTMENT

The **Medicaid Fraud Department** works to combat health-care-provider fraud in the Medicaid system and strives to halt patient abuse and neglect.

- **Investigators**—examine provider activity, such as instances of fraud, physical abuse, or neglect of Medicaid recipients and residents of long-term-care facilities.
- **Attorneys**—civilly and criminally prosecute providers when evidence exists.

In 2003, the Department received a total of **3,849 complaints**. From that number, **230 new investigations** were opened. Additionally, the Department closed **106 investigations** that were pending before 2003.

A total of **14 civil settlements** were negotiated, approximately **30 criminal cases** were referred for prosecution, **9 criminal cases** were resolved, and **7 civil suits** were filed. As a result, the Department recovered **\$2,530,048.57** in civil settlements and criminal restitution. Of that amount, \$1,500,000 is attributable to the civil settlement reached with Beverly Enterprises, Inc.

Arkansas' Medicaid Fraud Department, located in the Office of the Attorney General, consists of six attorneys, eight investigators, two nurse investigators, an auditor, and five support staff. The staff is committed to the Department's mission of protecting the elderly and safeguarding our public funds.

## NOTABLE CASES

- In State v. Kenny Coffey, the Medicaid Fraud Department prosecuted an employee of a residential-care facility for raping a mentally retarded resident of the facility. The defendant pled guilty to a charge of attempted rape and received a 20-year sentence to the Arkansas Department of Correction. He is required to register as a sex offender and is to have no contact with the victim.
- In State v. Andrew Beavers, Medicaid fraud charges were filed against the owner of a transportation company for inflating the mileage-per-trip for Medicaid recipients and receiving more money than he was entitled to receive. The owner pled guilty to misdemeanor Medicaid fraud; received a one-year probation sentence; paid restitution to the Medicaid program; and is excluded from participating in the Arkansas Medicaid program.
- A \$70,000 civil settlement was reached before trial in State v. Westlake, where it was determined that two residents of a facility were neglected.



- A resident died at a residential-care facility while being restrained in a wheelchair without supervision. The physician's order required one-on-one supervision for the resident while restrained. The resident slid down in the wheelchair, and in the process, strangled on the seatbelt. This case was settled before trial.

## AG Beebe reaches Medicaid settlements

Pharmaceutical companies Bayer Corporation and GlaxoSmithKline (Glaxo) have agreed to pay Arkansas a total of more than \$1 million as part of one of the largest ever Medicaid settlements.

The 50 states and the District of Columbia will collectively recover approximately \$250 million from Bayer and about \$90 million from Glaxo for failing to give the Medicaid program the "best price," as they are required to do. But, Bayer and Glaxo sold products to HMOs at deeply discounted prices and then concealed that fact to avoid their obligation to offer the "best price" to Medicaid programs. This was accomplished by re-labeling or re-packaging those drugs under the HMO's private label, so that



Arkansas Attorney General Mike Beebe

Bayer and Glaxo would not have to list the prices at which those private-label drugs were sold in determining the "best price." This scheme is known in the industry as "tick and stick."

Bayer is paying Arkansas \$802,195.81 in criminal penalties to reimburse the Medicaid Program Trust Fund for alleged overcharges involving its antibiotic Cipro and its high-blood-pressure medicine Adalat. Glaxo has agreed to pay Arkansas a civil fine of \$338,323.56 for overcharges involving its anti-depressant Paxil and nasal allergy spray Floxase.

"This is a very significant settlement requiring an unprecedented payment by Bayer and Glaxo," Attorney General Beebe said. "I hope it sends a message to all pharmaceutical companies that these kinds of practices are unacceptable." For questions, contact the Attorney General's Office at 200 Cattell-Frien Tower Building, 323 Center Street, Little Rock, AR 72201. The office can be reached by calling (501) 682-2341 or 1-(800) 482-8982. TDD service is available for the hearing-impaired 682-6073.

Grand Prairie Herald | Hazen, AR | 5/7/2003

- In another restraint case, a resident died after falling out of bed because a rail was missing from one side of the bed. The resident was unable to stand or walk and required a bed with rails on both sides. When the bed was moved away from the wall to accommodate other medical equipment, the patient became wedged between the bed and the wall. As a result, the patient suffered two broken hips and died the following day. A settlement was reached with the facility.

- The Medicaid Fraud Department investigated complaints of mistreatment and neglect in the care of nine patients at Arkansas Health Center.

A settlement was reached in June that required

the facility to address inadequate patient care, while still keeping the Center operational and serving Arkansans who otherwise would have no place to receive care. AHC paid a \$30,000 penalty to the Arkansas Medicaid Program Trust Fund.

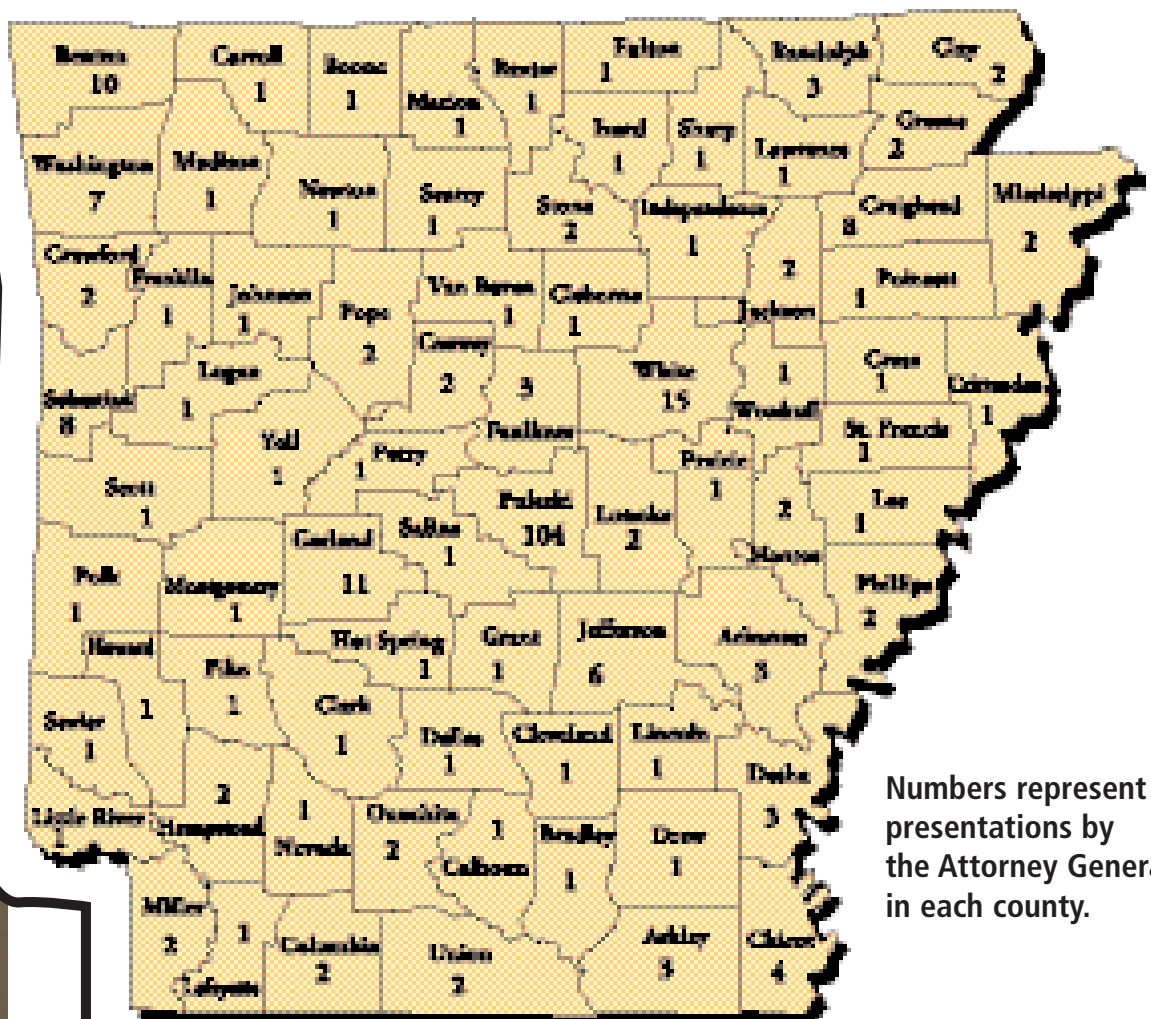
The Arkansas Medicaid Fraud Department participated in four global settlements coordinated by the National Association of Medicaid Fraud Control Units (NAMFCU). The total federal and State share for Arkansas was **\$1,870,598.19**. Arkansas's portion of the proceeds totaled **\$649,472.64**. The four global settlements are as follows: One settlement was reached with Abbott Laboratories after investigations revealed questionable marketing tactics for enteral-feeding supplies. An investigation was also conducted into the sale of defective blood-glucose monitors and test strips and a settlement was reached with LifeScan. A settlement with Pfizer addressed its failure to report the "best price" for the drug Lipitor. And a settlement with GlaxoSmithKline was reached after an investigation disclosed that the company had improperly reported the "best price" for the drugs Flonase and Paxil.

# PUBLIC AFFAIRS

## About the Division

**The Public Affairs Division** of the Attorney General's Office provides services to community groups and civic organizations across Arkansas. Its members work with public officials and citizens to provide information about programs offered by the Attorney General's Office and to keep informed of the needs and concerns of Arkansans. The staff of the Public Affairs Division is committed to:

- Respond to and provide information for federal, State, and local officials on behalf of the Attorney General's Office;
- Advise businesses, civic clubs, and community groups about services and programs available;
- Assist and provide support to the Attorney General's Advisory Boards;
- Present programs to constituents statewide who are interested consumer-protection issues, including Internet safety, identity theft, consumer fraud, and current scams.



Numbers represent presentations by the Attorney General in each county.

# PUBLIC AFFAIRS CONT.



**Attorney General Mike Beebe Sits Down With The People**



Arkansas Attorney General Mike Beebe made a scheduled stop in Marshall on Wednesday afternoon, November 19. Beebe had been traveling to surrounding counties to discuss whatever was on the minds of the people. On his stop at the Sunset Restaurant in Marshall, he met with several local officials along with a group of residents who questioned Beebe on different developments such as school consolidation, drug courts, and clean up along the highways. Pictured above Beebe meets with Searcy County Judge Paul Ray Lee, County Clerk Wesley Smith, and County Tax Assessor Niagie Ratchford.



Marshall Mountain Wave  
Marshall, AR | 11/27/2003





# OMBUDSMAN REPORT

The Attorney General's ombudsman, Robert Fisher investigates citizen complaints against the government and assists in achieving satisfactory and fair resolutions. As part of his job, he answers many phone calls, sees visitors daily, and responds to constituent letters, faxes, and e-mails.

## ARKANSAS ATTORNEY GENERAL OMBUDSMAN ANNUAL REPORT 2003

Month	Calls	Visitors	E-mails/Constituent Letters
January	641	12	1,115
February	561	8	1,161
March	756	7	1,260
April	530	4	1,278
May	210	2	448
June	699	10	1,687
July	606	4	1,491
August	676	11	3,659
September	698	12	3,334
October	521	6	1,770
November	486	5	1,623
December	316	4	929
<b>Totals</b>	<b>6,700</b>	<b>85</b>	<b>19,755</b>

I called the Attorney General's Office (they do have an 800 number and their receptionist did go to charm school) and was connected to Mr. Fisher. I explained my dilemma...Mr. Fisher did not do it, nor did he know who did it but he said there had to be a lawsuit for the money to be held in escrow...Yes, Mr. Fisher was right, there is a lawsuit.

Hot Springs Village Voice | Hot Springs, AR | 3/10/2004



# ADDITIONAL RESOURCES

## FROM THE ATTORNEY GENERAL'S OFFICE

### GENERAL

Attorney General's Office "Guide to Services"  
Attorney General's Office "General Information Brochure"

### CHILD SAFETY

"Keys to Safety" Brochure  
"Keys to Safety" Parent Manual  
"Keys to Safety" Curriculum Package, with supplemental handouts and video  
Arkansas Missing Children's Clearinghouse  
General Child Safety Brochures (produced by the National Center for Missing and Exploited Children)  
    Child Protection  
    Teen Safety on the Information Highway  
    Child Safety on the Information Highway  
    Parental Guidelines in Case Your Child Might Someday Be Missing  
    Parental Guidelines in Case Your Child Might Someday Be a Runaway  
    Parental Guidelines in Case You Are Considering a Family Separation  
Family Abduction Prevention and Response  
Youth Suicide Prevention General Handout Materials  
Child Identification Kits

### CONSUMER EDUCATION

Public Protection Consumer Booklet  
Senior Citizen Guide  
Identity Theft: When Bad Things Happen to Your Good Name  
Arkansas Freedom of Information Handbook  
A Consumer's Guide to the Arkansas Lemon Law  
Consumer Tip Sheets

### CRIME VICTIM'S ASSISTANCE AND VIOLENT CRIME PREVENTION

Crime Victims Annual Report and Brochure  
Crime Victims' Rights Brochure  
Crime Victims Reparations Application  
Rape Prevention Brochure

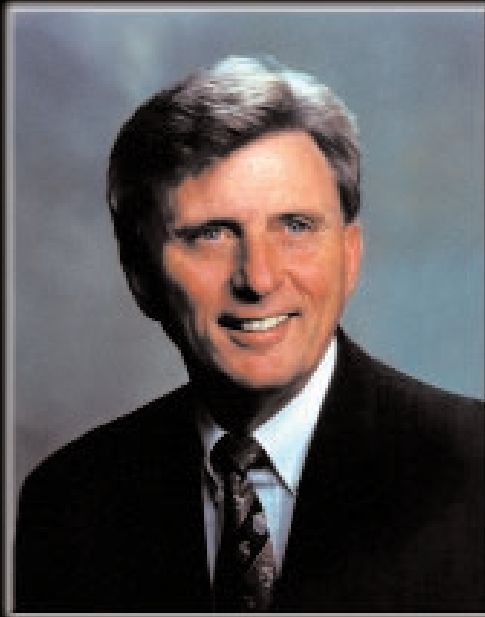
### LAW-ENFORCEMENT INFORMATION

10-8 Newsletter

### LAW EDUCATION

"Smart Choices, Better Chances" Brochure  
"Smart Choices, Better Chances" Activity Booklet  
"Smart Choices, Better Chances" Juvenile Law Handbook  
"Smart Choices, Better Chances" Curriculum and Video  
"What's Happening in Court?" An Activity Book for Children  
Who Are Going to Court in Arkansas





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